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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CHRYSTIANE LAYOG, an individual, on behalf of herself and all others similarly situated;

Plaintiff,

vs.

WELLS FARGO, an unknown business entity; and DOES 1 through 100, inclusive

Defendants.

**Case No.:**

**CLASS ACTION**

**Assigned For All Purposes To:**

**Hon.**

**Dept:**

**CLASS ACTION COMPLAINT FOR:**

- 1. FAILURE TO PAY OVERTIME UNDER FLSA [29 USC §§ 206, 207]**
- 2. FAILURE TO PAY WAGES AND OVERTIME (LABOR CODE § 1194);**
- 3. FAILURE TO PROVIDE MEAL BREAKS (LABOR CODE §226.7);**
- 4. FAILURE TO PROVIDE REST PERIODS (LABOR CODE §226.7);**
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (LABOR CODE §226)**
- 6. FAILURE TO PAY ALL WAGES DUE TWICE MONTHLY (LABOR CODE §204)**
- 7. FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT (LABOR CODE §§200-203);**
- 8. UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS PRACTICES**

**JURY TRIAL DEMANDED**

1 All allegations in this Class Action Complaint are based upon information and  
2 belief except for those allegations which pertain to the PLAINTIFF and her counsel.  
3 Each allegation in this Complaint either has evidentiary support or is likely to have  
4 evidentiary support after discovery. Plaintiff CHRYSTIANE LAYOG (“Plaintiff”),  
5 on behalf of herself and all others similarly situated, complains as to DEFENDANT  
6 WELLS FARGO (“Defendant” or “Wells Fargo”) and DOES 1-100 (collectively  
7 “Defendants”), and each of them, and for causes of action alleges:

8 **PRELIMINARY ALLEGATIONS**

9 1. Plaintiff CHRYSTIANE LAYOG is, and at all times mentioned herein  
10 was, an individual residing in the County of Santa Clara, State of California.

11 2. This is a class action, pursuant to California Code of Civil Procedure §  
12 382 and Rule 23 of the Federal Rules of Civil Procedure, on behalf of Plaintiff and  
13 all non-exempt employees employed by, or formerly employed by DEFENDANT  
14 WELLS FARGO (“Defendant” or “Wells Fargo”), an unknown business entity, and  
15 DOES 1 through 100, inclusive (collectively “Defendants”), within the State of  
16 California as tellers. The employees employed by, or formerly employed by,  
17 Defendants within the State of California as non-exempt tellers are hereinafter  
18 referred to individually as “Class Members” and collectively as the “Class” or  
19 “Classes.”

20 3. For at least four years prior to the filing of the original Complaint on  
21 **January 28, 2010** in the class action entitled *Ramirez et al. v Wells Fargo Bank*,  
22 Superior Court of the State of California for the County of Alameda (Case No.  
23 RG10496146), by virtue of tolling under *American Pipe & Construction Co. v.*  
24 *Utah*, 414 U.S. 538 (1974) and equitable tolling, and through to the present  
25 (“relevant time period” or “liability period”), Defendants consistently maintained  
26 and enforced against Defendants’ non-exempt employees, among others, the  
27 following unlawful practices and policies, in violation of California state wage and  
28 hour laws:

1 (a) During the Relevant Time Period, Defendants had a consistent policy of  
2 requiring employees to work more than eight (8) hours in any given day and/or more  
3 than forty (40) hours in any given week, and not paying straight time, minimum  
4 wages, overtime compensation pursuant to applicable California Labor Code  
5 requirements;

6 (b) During the Relevant Time Period, Defendants had a consistent policy of  
7 requiring Class Members within the State of California, including Plaintiff, to work  
8 at least five (5) hours without a lawful meal period and failing to pay such employees  
9 one (1) hour of pay at the employees' regular rate of compensation for each workday  
10 that the meal period is not provided, as required by California state wage and hour  
11 laws.

12 (c) During the Relevant Time Period, Defendants have had a consistent  
13 policy of failing to provide Class Members within the State of California, including  
14 Plaintiff, rest periods of at least (10) minutes per three and a half (3.5) hours worked  
15 or major fraction thereof and failing to pay such employees one (1) hour of pay at  
16 the employees regular rate of compensation for each workday that the rest period is  
17 not provided, as required by California state wage and hour laws;

18 (d) With respect to Class Members who either were discharged, laid off, or  
19 resigned, during the Relevant Time Period, Defendants failed to pay them in  
20 accordance with the requirements of Labor Code §§ 201, 202, 203; and

21 (e) During the Relevant Time Period, Defendants failed to maintain  
22 accurate records of Class Members' earned wages and work periods, as evidenced,  
23 for example, by Defendants' failure to keep adequate records of meal periods.

24 4. Plaintiff, on behalf of herself and all other Class Members, brings this  
25 action pursuant to California Labor Code §§ 201, 202, 203, 218, 218.6, 226, 226.7,  
26 512, 1194, 1199, and California Code of Regulations, Title 8, section 11000 et seq.,  
27 seeking unpaid straight pay, overtime, meal and rest period compensation, penalties,  
28 injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

1           5.     Plaintiff, on behalf of herself and all Classes, pursuant to Business and  
2 Professions Code §§ 17200-17208, also seeks injunctive relief and restitution for  
3 the unfair, unlawful, or fraudulent practices alleged in this Complaint.

4           6.     The amount in controversy is in excess of the minimum jurisdiction of  
5 this court, exclusive of interest and costs.

6           7.     Plaintiff is informed and believes, and thereon alleges, that Defendant  
7 WELLS FARGO is, and at all times mentioned herein was, an unknown business  
8 entity with many branches located throughout California existing under the laws of  
9 the State of California, with substantial contacts throughout California, including  
10 Santa Clara County County.

11          8.     The true names and capacities of DOES 1 through 100 inclusive,  
12 whether individual, corporate, associate or otherwise, are unknown to Plaintiff, who  
13 therefore sues such Defendants by fictitious names pursuant to California Code of  
14 Civil Procedure § 474. Plaintiff will amend the complaint to show their true names  
15 and capacities once they have been ascertained. Plaintiff is informed and believe,  
16 and thereon allege, that each of the fictitiously named Defendants are responsible in  
17 some manner for the occurrences alleged, and that Plaintiff's injuries and damages  
18 as alleged were proximately caused by their conduct. Doe Defendants will be  
19 referred to collectively with Wells Fargo as "Defendants."

20          9.     Plaintiff is informed and believes, and thereon alleges, that Defendants,  
21 and each of them, at all relevant times were the agents, employees, servants, joint  
22 ventures, directors, fiduciaries, representatives, and/or co-conspirators of each of  
23 the remaining Defendants. The Defendants, in doing the things alleged, were acting  
24 within the course and scope of such relationship and are responsible in some manner  
25 for the occurrences alleged and, as a proximate cause, of Plaintiff's damages as  
26 alleged.

27          10.    Plaintiff is informed and believes, and thereon alleges, that each of the  
28 Defendants knowingly and purposefully conspired to and agreed to the acts herein

1 alleged. Defendants did these acts pursuant to and in furtherance of their  
2 conspiracy. Defendants furthered their conspiracy by cooperation, lending aid,  
3 encouragement, ratification and adopting the acts of each other.

4 11. Plaintiff is informed and believes and thereon alleges, that Defendants  
5 committed other wrongful acts or omissions of which Plaintiff is presently unaware.  
6 Plaintiff will seek leave of court to amend this Complaint when Plaintiff discovers  
7 any other acts or omissions of such Defendants.

8 12. Venue as to each Defendant is proper in this judicial district, pursuant to 28  
9 U.S.C. §§ 1391(a)-(c). The Court has personal and subject matter jurisdiction over the  
10 parties and claims pursuant 28 U.S.C. § 1332(d) (the Class Action Fairness Act (“CAFA”),  
11 as well as under 28 U.S.C. § 1331 (based upon the FLSA claim under 29 U.S.C. § 203 et  
12 seq.). This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 for all claims  
13 asserted under the California Labor Code and related provision. On information and belief,  
14 Defendants operate and are doing business as Wells Fargo in California and are doing  
15 business in San Francisco County and throughout California, and each Defendant is within  
16 the jurisdiction of this Court for service of process purposes. The unlawful acts alleged  
17 herein have a direct effect on Plaintiff and those similarly situated within the State of  
18 California. Defendant employs numerous Class Members in San Francisco County and in  
19 this District, and its headquarters are located in San Francisco, California.

#### 20 **FACTUAL BACKGROUND**

21 13. Plaintiff Layog was a teller for Defendant and was employed from  
22 December of 2011 through July of 2014. She was assigned to the Sunnyvale, California  
23 Wells Fargo branch location co-located in a Safeway supermarket.

24 14. Plaintiff, along with the other members of the proposed Class, was also  
25 required to work overtime and substantial off the clock hours without receiving pay for  
26 all hours worked at the required rate of pay. Plaintiff was required to work for 10-15  
27 minutes both before and after her shift and off the clock to so that she could perform  
28 tasks necessary for starting work at the start of her shift time, and Plaintiff and the other

1 Class Members were also required to have their computer systems up and running when  
2 their shifts started and the shut down their computers off the clock after their shifts  
3 ended. The branch computer systems had to be booted up and shut down each day, and  
4 Plaintiff and the Class Members were required to log into the computer system with  
5 their employee log on, and into the Store Vision Teller system (“SVT system”), to begin  
6 work. The required SVT inputs included an entry showing the teller’s cash box was  
7 properly accounted for, and were all time stamped to reflect when the employees logged  
8 on and performed various tasks. These SVT log times will show the times when  
9 Plaintiff and the Class Members were working even though their inputs into the Time  
10 Tracker timekeeping system they were required to input by managers showed them to  
11 be off the clock.

12 15. Entries in Wells Fargo’s Time Tracker system were not  
13 contemporaneous, and had to be approved by managers first before they were sent  
14 to payroll. Plaintiff and the Class members were not permitted to enter any overtime  
15 hours, or had their overtime hours worked changed or were required by managers to  
16 change their time entries to reflect less hours than they actually worked, as they  
17 were instructed by managers that Defendant would not pay overtime or tightly  
18 controlled it. Plaintiff and the Class Members were therefore often required to input  
19 inaccurate time into the Time Tracker system at the instruction of their managers so  
20 the managers could ensure that no one had overtime, even though Plaintiff and the  
21 Class Members actually worked a substantial number of overtime hours. The  
22 timekeeping system, namely the Time Tracker system, was not contemporaneous,  
23 and only reflected what Plaintiff and the Class members inputted into it. As these  
24 entries were also often either amended by managers or by employees at the  
25 managers’ instruction to reflect less hours worked or to reflect that compliant meal  
26 periods were provided when they were not, they were not a true and accurate  
27 reflection of the actual hours worked by Plaintiff and the Class Members.  
28

1           16. Plaintiff and the other Class members were also required to attend and  
2 conduct mandatory customer experience meetings, which employees were required  
3 to attend even if they were off. Plaintiff would be written up if her customer reviews  
4 were not acceptable to her managers, and she and the other Class members were  
5 instructed that serving the customers was their paramount concerns, thus taking  
6 priority over their breaks. The complaints by Plaintiff and the Class members  
7 regarding these and the other failure to pay wages were ignored by Defendant, and  
8 Defendant also failed to pay all wages owed to them by failing to include production  
9 related bonuses in the regular rate it used to calculate the overtime it so tightly  
10 controlled. Therefore, if and when Plaintiff and the Class Members were actually paid  
11 for their overtime hours worked, they were not paid at the required rate of pay for  
12 overtime.

13           17. Plaintiff and the Class members were also not provided with all their  
14 required meal periods and were not authorized and permitted to take all their required  
15 rest breaks. Throughout the duration of her employment, Plaintiff was frequently called  
16 upon during her meal and rest periods to assist with customers and sales. Due to the  
17 work demands placed upon them by Defendant, and the chronic understaffing that  
18 occurred, Plaintiff and the Class members did not receive all of their required meal  
19 periods and rest breaks. They were required by managers and the work demands placed  
20 upon them to return to work when they were on break or to work through breaks so that  
21 they could help customers or were otherwise unable to take their breaks because the  
22 customer lines were long. On these occasions, Plaintiff and the Class members were  
23 instructed to input time in a way that would not show that they missed a meal break or  
24 received one for less than 30 (thirty) minutes or received one before the fifth hour of  
25 work in order to avoid a violation. In addition to either not receiving meal periods or  
26 receiving them late or for less than the required thirty (30) minutes, Plaintiff and the  
27 Class members were not authorized and permitted to take a ten (10) minute duty-free  
28 rest period for every four hours worked, or major fraction thereof, due to the work

1 demands placed upon them and the understaffing that occurred. If and when they did  
2 receive a first rest break on a shift, they did not receive a second one or else the breaks  
3 they did receive were interrupted or on-duty.

4 18. Additionally, while the Time Tracker entries show some payments for meal  
5 and rest period premiums, they do not reflect all the violations and entries that were  
6 inputted in the time records did not always get reflected on the wage statements and  
7 payroll records. Plaintiff and the Class members were discouraged from inputting or  
8 otherwise instructed by managers not to input any codes for meal period or rest break  
9 violations in the Time Tracker system so that the records would reflect compliance  
10 when they were not compliant. They were also required and instructed by managers to  
11 remove any inputted meal period or rest break violations after they had been entered so  
12 that Defendant could avoid paying premium penalty wages and they would not  
13 adversely impact the store budgets.

14 19. As a result of these above described failures to pay wages, and Defendants'  
15 failure to provide one hour of pay at the regular rate for meal and rest period violations,  
16 Defendants failed to pay Plaintiff and the other employee Class Members all wages  
17 owed in a timely manner pursuant to Labor Code § 204. With this in mind, the wage  
18 statements provided to Plaintiff and the similarly situated employee Class Members  
19 failed to accurately itemize all of the requirements set forth in Labor Code § 226(a),  
20 including total hours worked, all applicable wage rates, total net wages earned, and the  
21 total wages earned at the applicable rates. Though Plaintiff' employment with  
22 Defendants concluded more than 6 months ago, they have not been timely paid all  
23 wages owed. This violates Labor Code §§ 201-203, and other former employees were  
24 also believed to be subject to the same failure to timely pay all wages owed at  
25 termination or separation. As a result of these unlawful business practices, Plaintiff and  
26 the putative Class have not received all premium pay owed and have incurred lost  
27 wages, along with other losses and penalties for the violations addressed herein.



1        20. On information and belief, Plaintiff alleges that Defendants' actions as  
2 described throughout this Complaint were willful.

3        21. Defendants have made it difficult to account with precision for the  
4 unpaid wages and unlawfully withheld meal and rest period compensation owed to  
5 Defendants' non-exempt employees, including Plaintiff, during the liability period,  
6 because they did not implement and preserve a record-keeping method as required  
7 for non-exempt employees by California Labor Code §§ 226, 1174(d), and section  
8 4 of the California Wage Orders. Defendants have failed to comply with Labor  
9 Code § 226(a) by failing to accurately report total hours worked by Plaintiff and the  
10 Class Members. Plaintiff and Class Members are therefore entitled to penalties not  
11 to exceed \$4,000 for each employee pursuant to Labor Code § 226(b).

12        22. Defendants have failed to comply with section 4 of the California IWC  
13 Wage Orders by failing to maintain time records accurately showing when each  
14 employee begins and ends each work period and meal period, failing to accurately  
15 record and report all wages earned pursuant to Labor Code § 226.7, and by failing  
16 to accurately record and report total daily hours worked by Class Members and all  
17 deductions from payment of wages on their itemized wage statements.

18                    **DELAYED DISCOVERY AND EQUITABLE TOLLING**

19        23. Defendants, as prospective and actual employers of the Class members, had a  
20 special fiduciary duty to disclose to prospective Plaintiff Classes the true facts surrounding  
21 Defendants' pay practices, policies and working conditions imposed upon non-exempt,  
22 hourly employees. In addition, Defendants knew that they possessed special knowledge  
23 about their pay practices and policies, most notably intentionally refusing to pay overtime and  
24 straight time hours actually worked and recorded on Defendants' punch records.

25        24. Plaintiff and Plaintiff Classes did not discover the fact that they were entitled to  
26 all pay under the Labor Code until shortly before the filing of this lawsuit nor was there ever  
27 any discussion about Plaintiffs and the Class' waiver of their Constitutional rights of trial by  
28 jury, right to collectively organize and oppose unlawful pay practices under California and

1 federal law as well as obtain injunctive relief preventing such practices from continuing. As  
2 a result, the applicable statutes of limitation were tolled until they discovered their claims.

3 25. The applicable statutes of limitation for the claims of Plaintiff and the  
4 Class Members in this action are tolled from the class action entitled *Ramirez et al.*  
5 *v Wells Fargo Bank*, Superior Court of the State of California for the County of  
6 Alameda Case No. RG10496146, filed on **January 28, 2010**, by virtue of tolling  
7 under *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974) and equitable  
8 tolling.

9 **CLASS ALLEGATIONS**

10 26. Plaintiff brings this action on behalf of herself and all others similarly  
11 situated as a class action pursuant to California Code of Civil Procedure § 382 and  
12 Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seek to represent a Class  
13 (or “Class Members”) composed of and defined as:

14 **All persons who are employed or have been employed by Defendants**  
15 **in the State of California, during the period of four years prior to**  
16 **January 28, 2010 through resolution of this action, who have worked**  
17 **as non-exempt tellers.**

18 27. Further, Plaintiff seeks to represent the following subclasses composed  
19 of and defined as follows (collectively with the “Class” referred to as the “Plaintiff  
20 Classes”):

21 (a) **Subclass 1. FLSA Overtime Class.** All current and former non-exempt  
22 employees of Defendants throughout the United States employed during the period  
23 of four years prior to **January 28, 2010** through resolution of this action who worked  
24 more than forty (40) hours in any given week and who were not paid overtime  
25 compensation pursuant to applicable FLSA requirements.

26 (b) **Subclass 2. Wage Payment Subclass.** All persons who are employed  
27 or have been employed by Defendants in the State of California who, during the  
28 period of four years prior to **January 28, 2010** through resolution of this action, have

1 worked as non-exempt tellers and were not provided all wages earned pursuant to  
2 the Labor Code and applicable IWC Wage Orders.

3 (c) **Subclass 3. Meal Break Subclass.** All persons who are employed or  
4 have been employed by Defendants in the State of California who, during the period  
5 of four years prior to **January 28, 2010** through resolution of this action, have  
6 worked as non-exempt tellers and have not been provided a meal period for every  
7 five (5) hours or major fraction thereof worked per day, and were not provided one  
8 (1) hour's pay for each day on which such meal period was not provided pursuant to  
9 Labor Code § 226.7 and § 512.

10 (d) **Subclass 4. Rest Period Subclass.** All persons who are employed or  
11 have been employed by Defendants in the State of California who, during the period  
12 of four years prior to **January 28, 2010** through resolution of this action, have  
13 worked as non-exempt tellers and have not been provided a rest period for every  
14 three and a half (3.5) hours or major fraction thereof worked per day, and were not  
15 provided compensation of one (1) hour's pay for each day on which such rest period  
16 was not provided pursuant to Labor Code § 226.7 and § 512.

17 (e) **Subclass 5. Paystub Subclass.** All persons who are employed or have  
18 been employed by Defendants in the State of California who, during the period of  
19 four years prior to **January 28, 2010** through resolution of this action, have worked  
20 as non-exempt tellers and were not provided an itemized statement accurately  
21 showing total hours worked, the applicable hourly rates in effect during each pay  
22 period, the corresponding hours worked at each rate, or any of the other requirements  
23 pursuant to Labor Code § 226(a).

24 (f) **Subclass 6. Termination Pay Subclass.** All persons who are employed  
25 or have been employed by Defendants in the State of California who, during the  
26 period of four years prior to **January 28, 2010** through resolution of this action, have  
27 worked as non-exempt tellers and were not provided all wages due upon termination  
28 or resignation pursuant to Labor Code §§ 200 through 203.

1  
2 (g) **Subclass 7. B&P Code § 17200 Subclass.** All persons who are  
3 employed or have been employed by Defendants in the State of California who,  
4 during the period of four years prior to **January 28, 2010** through resolution of this  
5 action, have worked as non-exempt tellers and who were subjected to Defendants'  
6 unlawful, unfair or fraudulent business acts or practices in the form of Labor Code  
7 violations regarding overtime, meal periods, rest periods, or minimum wages and/or  
8 waiting time penalties.

9 28. Plaintiff reserves the right, under Rule 15 of the Federal Rules of Civil  
10 Procedure and Rule 1855(b) of the California Rules of Court, to amend or modify  
11 the class descriptions with greater specificity or to provide further division into  
12 subclasses or limitation to particular issues.

13 29. This action has been brought and may properly be maintained as a class  
14 action under the provisions of the California Code of Civil Procedure § 382 and  
15 Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined  
16 community of interest in the litigation and the proposed Class and Plaintiff Classes  
17 are easily ascertainable.

### 18 **Numerosity**

19 30. The potential members of each Class as defined are so numerous that  
20 joinder of all the members of the Class is impracticable. Plaintiff estimates there  
21 are more than 1,000 Class Members. While the precise number of Class Members  
22 has not been determined at this time, Plaintiff is informed and believes that  
23 Defendants currently employ, and during the relevant time periods employed,  
24 thousands of employees in positions as Defendants' non-exempt tellers in  
25 California, who are or have been affected by Defendants' unlawful practices as  
26 alleged herein.

27 31. Employee turnover during the relevant time period will increase this  
28 number substantially. Upon information and belief, Plaintiff alleges Defendants'

1 employment records would provide information as to the number and location of all  
2 Class Members. Joinder of all members of the proposed Plaintiff Classes is not  
3 practicable.

4 **Commonality**

5 32. There are questions of law and fact common to each Class predominating  
6 over any questions affecting only individual Class Members. These common  
7 questions of law and fact include, without limitation:

8 (a) Whether Defendants violated Labor Code §§ 226.7 and 512, section 4 of  
9 the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11040, et seq. by failing  
10 to provide a meal period to non-exempt tellers on days they worked work periods in  
11 excess of five (5) hours and failing to compensate said employees one (1) hour's  
12 wages in lieu of meal periods;

13 (b) Whether Defendants violated Labor Code § 226.7 and the IWC Wage  
14 Orders, and Cal. Code Regs., Title 8, section 11040 et seq. by failing to provide  
15 daily ten (10) minute rest periods to non-exempt tellers for every three and a half  
16 (3.5) hours and/or 7 hours or major fraction thereof worked and failing to  
17 compensate said employees one (1) hour's wages in lieu of rest periods;

18 (c) Whether Defendants violated Labor Code § 226 and § 1174 and the IWC  
19 Wage Orders by failing to maintain accurate records of Class Members' earned  
20 wages and work periods;

21 (d) Whether Defendants violated Labor Code § 1194 by failing to  
22 compensate all employees during the relevant time period for all hours worked,  
23 whether regular or overtime;

24 (e) Whether Defendants violated Business and Professions Code § 17200 et  
25 seq. by failing to provide meal and rest periods without compensating non-exempt  
26 tellers one (1) hour's pay for every day such periods were not provided, failing to  
27 pay compensation for denied meal and rest periods due and owing at the time a Class  
28 Member's employment with Defendants terminated, and failing to keep accurate

1 records;

2 (f) Whether Defendants violated § 17200 et seq. of the Business and  
3 Professions Code, Labor Code §§ 201-203, 204, 206.5, 215, 216, 220, 221, 226,  
4 226.7, 510, 512, 1174, 1194, and applicable IWC Wage Orders, which constitutes a  
5 violation of fundamental public policy; and

6 (g) Whether Plaintiff and the Class Members are entitled to equitable relief  
7 pursuant to Business and Professions Code § 17200 et seq.

8 There are common answers to these questions which further demonstrate that  
9 class treatment is appropriate in this case.

### 10 **Typicality**

11 33. The claims of the named Plaintiff is typical of the claims of the Class  
12 Members. Plaintiff and all members of each of the Plaintiff Classes sustained  
13 injuries and damages arising out of and caused by Defendants' common course of  
14 conduct in violation of California laws, regulations, and statutes as alleged herein.

### 15 **Adequacy of Representation**

16 34. Plaintiff will fairly and adequately represent and protect the interests of  
17 the members of each Class. Counsel who represent Plaintiff are competent and  
18 highly experienced in litigating large employment and wage & hour class actions,  
19 certified numerous contested class actions, and have even participated in a jury trial  
20 of a certified class action.

### 21 **Superiority of Class Action**

22 35. A class action is superior to other available means for the fair and  
23 efficient adjudication of this controversy. Individual joinder of all Class Members  
24 is not practicable, and questions of law and fact common to each of the Plaintiff  
25 Classes predominate over any questions affecting only individual members of the  
26 Class. Each member of the Class has been damaged and is entitled to recovery by  
27 reason of Defendants' unlawful policies and practices alleged in the Complaint.  
28

36. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

37. Class Plaintiff contemplates the eventual issuance of notice to the proposed Class Members of each of the Plaintiff Classes that would set forth the subject and nature of the instant action. The Defendants' own business records can be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notice is required, additional media and/or mailings can be used.

**FIRST CAUSE OF ACTION**  
**FOR FAILURE TO PAY OVERTIME COMPENSATION**

**[FLSA 29 USC § 203]**

**(Against WELLS FARGO and DOES 1 through 100)**

38. Plaintiff and the Plaintiff Classes re-allege and incorporate by reference all of the allegations in the preceding paragraphs of this complaint as though fully set forth herein.

39. At all relevant times hereto, Defendants have been an “enterprise engaged in commerce or in the production of goods for commerce,” as defined under 29 U.S.C. § 203(s)(1).

40. Plaintiff is informed and believes, and thereon allege, that Defendants have required, or require, the FLSA Class Members as part of their employment to work without additional compensation, such as overtime, in excess of the forty (40) hours per week maximum under 29 U.S.C. § 207(a)(I). That Section provides the following: “Except as otherwise provided in this section, no employer shall employ any of his employees ... for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at

1 a rate which is not less than one and one-half times the regular rate at which he is  
2 employed.”

3 41. In the performance of their duties for Defendants, members of the FLSA  
4 Class often did work over forty (40) hours per week and did not receive overtime  
5 compensation for the work, labor and services they provided to Defendants, as  
6 required by the FLSA, 29 U.S.C. §§ 206 and 207.

7 42. The precise number of unpaid overtime hours will be proven at trial.

8 43. Plaintiff proposes to undertake appropriate proceedings to have such  
9 FLSA Class Members aggrieved by Defendants’ unlawful conduct notified of the  
10 pendency of this action and to provide them with the opportunity to join this action  
11 as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with  
12 the Court.

13 44. Defendants’ violations of the FLSA were willful within the meaning of  
14 the statute and interpretive case law and decisions.

15 45. As a result of the foregoing, Plaintiff seeks judgment against Defendants  
16 on her own behalf and on behalf of those FLSA Class Members similarly situated  
17 who file written consents to joinder in this action, for all unpaid wages, including  
18 overtime wages owed by Defendants to the Representative Plaintiff and the FLSA  
19 Class, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional  
20 equal amount as liquidated damages, and costs, interest, and reasonable attorneys’  
21 fees, as provided for under 29 U.S.C. § 216(b).

22 **SECOND CAUSE OF ACTION**

23 **(FAILURE TO PAY WAGES AND OVERTIME COMPENSATION)**

24 **[California Labor Code §§ 510, 1174, 1198; IWC Wage Order 4]**

25 **(Against WELLS FARGO and DOES 1-100)**

26 46. Plaintiff re-alleges and incorporates by reference, as though fully set  
27 forth herein, the prior paragraphs of this Complaint.  
28



1           47. In California, employees must be paid at least the then applicable state  
2 minimum wage for all hours worked. (IWC Wage Order MW-2014).

3           48. Cal. Labor Code § 1198 provides that “[T]he maximum hours of work and the  
4 standard conditions of labor fixed by the commission shall be the maximum hours of work  
5 and the standard conditions of labor for employees. The employment of any employee for  
6 longer hours than those fixed by the order or under conditions of labor prohibited by the order  
7 is unlawful.”

8           49. Employees in California shall not be employed more than eight hours in any  
9 work day, and/or more than forty hours in any workweek, unless they receive additional  
10 compensation beyond their regular wages in amounts specified by law. More specifically,  
11 Labor Code § 510 codifies the right to overtime compensation at one and one-half times the  
12 regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours  
13 in a week or for the first eight (8) hours worked on the seventh day of work, and overtime  
14 compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours  
15 in a day or in excess of eight (8) hours in a day on the seventh day of work.

16           50. California Labor Code § 1194 provides that “any employee receiving less than  
17 the legal minimum wage or the legal overtime compensation applicable to the employee is  
18 entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
19 wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and  
20 costs of suit.” The action may be maintained directly against the employer in Plaintiff’s name  
21 without first filing a claim with the Department of Labor Standards and Enforcement.

22           51. At all times relevant hereto, IWC Wage Order No. 4-2001 [clerical, hourly]  
23 applied, and applies, to Plaintiff’s and the Class’ employment with Defendants.

24           52. At all times relevant hereto, the Labor Code requirements and IWC Wage Order  
25 No. 4-2001(3)(A) also provided for payment of overtime wages equal to one and one-half  
26 times an employee’s regular rate of pay for all hours worked over 8 hours a day and/or forty  
27 (40) hours in a work week, and for the first eight (8) hours on the seventh consecutive day of  
28 work in a work week.

53. At all times relevant hereto, Labor Code § 510 and IWC Wage Order No. 4-2001(3)(A) provided for payment of overtime premium wages equal to double the employee's regular rate of pay for all hours worked over twelve (12) hours in any workday, and for all hours worked over eight (8) hours on the seventh consecutive day of work in a work week.

54. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, to avoid payment of overtime wages and other benefits in violation of the California Labor Code and California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock before or after their work shifts or during breaks to complete their daily job duties or to attend and participate in company required activities. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, and imposed difficult to attain job and scheduling requirements on Plaintiff and the Class Members, which resulted in an underpayment of wages to employees over a period of time while benefiting Defendants.

55. At all times relevant hereto, from time to time, Plaintiff and the Wage Payment Subclass members have worked more than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as employees of Defendants. During the relevant time period, Plaintiff and the Wage Payment Subclass members were not fully paid for all the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day and/or in excess of forty (40) hours in a week as a result of Defendants' above described policies and practices. Therefore, Plaintiff and the Wage Payment Subclass members were not properly paid for all of their hours worked, including for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code § 1194, § 1197 and § 1198 and the provisions of IWC Wage Orders and the applicable California Code of

1 Regulations sections.

2 56. By virtue of the Defendants' unlawful failure to pay additional compensation to  
3 Plaintiff and the Wage Payment Subclass members for both regular time and overtime hours,  
4 Plaintiff and the Wage Payment Subclass members have suffered, and will continue to suffer,  
5 damages in amounts which are presently unknown to them, but which exceed the minimum  
6 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

7 57. Defendants' failure to pay these employees the proper wages has violated and  
8 continues to violate California Penal Code §§ 484 and 532 (obtaining labor through false  
9 pretenses).

10 58. Plaintiff is informed and believes, and based upon that information and belief  
11 alleges, that Defendants, and each of them, knew or should have known that these non-  
12 exempt employees did not qualify as exempt employees, and Defendants purposely elected  
13 not to pay Plaintiff and all non-exempt employees for their overtime labor.

14 59. Defendants, and each of them, acted intentionally, oppressively and maliciously  
15 toward Plaintiff and all non-exempt employees with a conscious disregard of their rights and  
16 the consequences to them, with the intent of depriving Plaintiff and the Wage Payment  
17 Subclass members of their property and legal rights and otherwise causing them injury.

18 60. Plaintiff, individually and on behalf of members of the Class and Plaintiff  
19 Classes, requests recovery of both straight time and overtime compensation according to  
20 proof, interest, attorney's fees and costs pursuant to Labor Code § 1194(a), as well as the  
21 assessment of any statutory penalties against these Defendants, and each of them, and any  
22 additional sums as provided by the Labor Code and/or other statutes.

23 61. Further, Plaintiff and the Class and Subclass members are entitled to seek and  
24 recover reasonable attorneys' fees and costs pursuant to Labor Code §§ 210 and 1194.

1  
2 **THIRD CAUSE OF ACTION**

3 **(FAILURE TO PROVIDE MEAL PERIODS)**

4 **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and**

5 **CODE OF REGULATIONS Title 8, §11040]**

6 **(Against WELLS FARGO and DOES 1-100)**

7 62. Plaintiff re-alleges and incorporates by reference, as though fully set  
8 forth herein, the prior paragraphs of this Complaint.

9 63. Labor Code §§ 226.7 and 512 and California Code of Regulations, Title  
10 8, § 11040(11)(A), provides that no employer shall employ any person for a work  
11 period of more than five (5) hours without a meal period of not less than 30 minutes.

12 64. Labor Code §§ 226.7 and 512 and California Code of Regulations, Title  
13 8, § 11040, provides that if an employer fails to provide an employee a meal period  
14 in accordance with this section, the employer shall pay the employee one (1) hour of  
15 pay at the employee's regular rate of compensation for each workday that the meal  
16 period is not provided.

17 65. Defendants, and each of them, have intentionally and improperly denied  
18 meal periods to Plaintiff in violation of Labor Code §§ 226.7 and 512 and California  
19 Code of Regulations, Title 8, § 11040 (11)(A) and other regulations and statutes.

20 66. At all times relevant hereto, Plaintiff worked more than five (5) hours in  
21 a workday.

22 67. At all times relevant hereto, Defendants, and each of them, failed to  
23 provide meal periods as required by Labor Code §§ 226.7 and 512 and California  
24 Code of Regulations, Title 8, § 11040 (11)(A).

25 68. By virtue of the Defendants' unlawful failure to provide meal periods to  
26 Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in amounts  
27 which are presently unknown to Plaintiff but which exceed the jurisdictional limits  
28 of this Court and which will be ascertained according to proof at trial.

1  
2        69. Plaintiff is informed and believes, and based upon that information and  
3 belief alleges, that Defendants, and each of them, purposely elected not to provide  
4 meal periods and scheduled Plaintiff in a manner which prevented her from taking a  
5 lawful meal period.

6        70. Defendants, and each of them, acted intentionally, oppressively and  
7 maliciously toward Plaintiff with a conscious disregard of her rights, or the  
8 consequences to Plaintiff, with the intent of depriving her of property and legal rights  
9 and otherwise causing Plaintiff injury.

10        71. Plaintiff requests, on behalf of herself and other members of the  
11 Plaintiff's Classes who endured similar violations, recovery of meal period  
12 compensation, on behalf of herself and other members of the Plaintiff's Classes who  
13 endured similar violations, pursuant to Labor Code §§ 226.7 and 512 and California  
14 Code of Regulations, Title 8, § 11040 (11)(D), as well as the assessment of any  
15 statutory penalties against these Defendants, and each of them, in a sum as provided  
16 by the Labor Code and/or other statutes.

17                                    **FOURTH CAUSE OF ACTION**

18                                    **(FAILURE TO PROVIDE REST PERIODS)**

19                                    **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and**

20                                    **CODE OF REGULATIONS Title 8, §11040]**

21                                    **(Against WELLS FARGO and DOES 1-100)**

22        72. Plaintiff re-alleges and incorporates by reference, as though fully set  
23 forth herein, the prior paragraphs of this Complaint.

24        73. California Labor Code §§ 226.7 and 512 and California Code of  
25 Regulations, Title 8, § 11040(12)(A), provides that employers authorize and permit  
26 all employees to take rest periods at the rate of ten (10) minutes net rest time per  
27 three and one-half hours (3.5) work hours.

1        74. California Labor Code §§ 226.7 and 512 and California Code of  
2 Regulations, Title 8, § 11040 (12)(D), provides that if an employer fails to provide  
3 an employee rest periods in accordance with this section, the employer shall pay the  
4 employee one (1) hour of pay at the employee's regular rate of compensation for  
5 each workday that the rest period is not provided.

6        75. Defendants, and each of them, have intentionally and improperly denied  
7 rest periods to Plaintiff in violation of California Labor Code §§ 226.7 and 512 and  
8 California Code of Regulations, Title 8, § 11040 (12)(A).

9        76. At all times relevant hereto, Plaintiff worked more than four hours in a  
10 workday.

11        77. At all times relevant hereto, the Defendants, and each of them, failed to  
12 provide rest periods as required by California Labor Code §§ 226.7 and 512 and  
13 California Code of Regulations, Title 8, § 11040(12)(A).

14        78. By virtue of the Defendants' unlawful failure to provide rest periods to  
15 the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in amounts  
16 which are presently unknown to Plaintiff but which exceed the jurisdictional limits  
17 of this Court and which will be ascertained according to proof at trial.

18        79. Plaintiff is informed and believe, and based upon that information and  
19 belief allege, that Defendants, and each of them, knew or should have known that  
20 Plaintiff was entitled to rest periods and purposely elected not to provide rest periods.

21        80. Defendants, and each of them, acted intentionally, oppressively and  
22 maliciously toward Plaintiff with a conscious disregard of her rights, or the  
23 consequences to Plaintiff, with the intent of depriving Plaintiff of property and legal  
24 rights and otherwise causing Plaintiff injury.

25        81. Plaintiff, on behalf of herself and other members of the Plaintiff's  
26 Classes who endured similar violations, requests recovery of rest period  
27 compensation pursuant to California Labor Code §§ 226.7 and 512 and California  
28 Code of Regulations, Title 8, § 11040(12)(B), as well as the assessment of any

1 statutory penalties against these Defendants, and each of them, in a sum as provided  
2 by the Labor Code and/or other statutes.

3 **FIFTH CAUSE OF ACTION**

4 **(FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS)**

5 **[CALIFORNIA LABOR CODE § 226]**

6 **(Against WELLS FARGO and DOES 1-100)**

7 82. Plaintiff re-alleges and incorporates by reference, as though fully set  
8 forth herein, the prior paragraphs of this Complaint.

9 83. Throughout Plaintiff's employment, Defendants intentionally failed to  
10 furnish to Plaintiff upon each payment of wages, itemized statements accurately  
11 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the  
12 number of piece-rate units earned and any applicable piece rate for Class Members  
13 paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive  
14 dates of the period for which the employee is paid, (7) the name of the employee and  
15 only the last four digits of his or her social security number or an employee  
16 identification number other than a social security number, (8) the name and address  
17 of the legal entity that is the employer and (9) all applicable hourly rates in effect  
18 during the pay period and the corresponding number of hours worked at each hourly  
19 rate by the employee pursuant to Labor Code § 226, amongst other statutory  
20 requirements.

21 84. Plaintiff, and other members of the Plaintiff's Classes who endured  
22 similar violations, were damaged by these failures because, among other things, the  
23 lack of the required information hindered them from determining the amount of  
24 wages owed to them and led them to believe they were not entitled to be paid wages  
25 for all hours worked, for overtime, missed meal and rest breaks, or for each hour of  
26 labor they performed, for hours rounded in a manner to benefit the employer, for  
27 piece rates where applicable, and the properly hourly rate where applicable, although  
28 they were so entitled. The absence of accurate wage statements has prevented timely

1 challenges to Defendants' unlawful pay practices, caused difficulty and expense in  
2 attempting to reconstruct time and pay records, and resulted in the submission by  
3 Defendants of inaccurate information about wages and deductions from wages to  
4 state and federal government agencies. The entitlement of Plaintiff and the Class to  
5 is to receive Wage Statements that accurately list the total amount of wages earned  
6 and deductions from wages as reflected on wage statements, and Plaintiff and the  
7 Class have thereby been injured by the Defendants' failure to report the total amount  
8 of wages earned during each pay period on each paycheck stub. All Class Members  
9 have been similarly injured. As a result of Defendants' conduct, Plaintiff and the  
10 Class have suffered injury because their legal right to receive accurate wage  
11 statements was violated.

12       85. Labor Code § 226(a) requires Defendants "semimonthly or at the time  
13 each payment to wages" to furnish to Plaintiff and the Class "an accurate itemized  
14 statement in writing" showing (1) gross wages earned, (2) total hours worked by the  
15 employee, (3) the number of piece-rate units earned and any applicable piece rate for  
16 Class Members paid on a piece-rate basis, (4) all deductions, (5) net wages earned,  
17 (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
18 the employee and only the last four digits of his or her social security number or an  
19 employee identification number other than a social security number, (8) the name  
20 and address of the legal entity that is the employer and (9) all applicable hourly rates  
21 in effect during the pay period and the corresponding number of hours worked at  
22 each hourly rate by the employee pursuant to Labor Code § 226. Defendants  
23 knowingly and intentionally failed to provide Plaintiff and the Class with such timely  
24 and accurate wage and hour statements.

25       86. Plaintiff and the Class suffered injury as a result of Defendants' knowing  
26 and intentional failure to provide them with the wage and hour statements as required  
27 by law and are presumed to have suffered injury and entitled to penalties under Labor  
28 Code § 226(e) as the Defendants have failed to provide a wage statement, failed to



1 provide accurate and complete information as required by any one or more of items  
2 Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiff and Class cannot promptly  
3 and easily determine from the wage statement alone one or more of the following:  
4 (i) The amount of the gross wages or net wages paid to the employee during the pay  
5 period or any of the other information required to be provided on the itemized wage  
6 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii)  
7 Which deductions the employer made from gross wages to determine the net wages  
8 paid to the employee during the pay period, (iii) The name and address of the  
9 employer and, (iv) The name of the employee and only the last four digits of his or  
10 her social security number or an employee identification number other than a social  
11 security number. For purposes of Labor Code § 226(e) “promptly and easily  
12 determine” means a reasonable person [i.e. an objective standard] would be able to  
13 readily ascertain the information without reference to other documents or  
14 information.

15 87. Defendants concealed this information from Plaintiff and the Class  
16 Members, despite having a statutory duty to provide this information, entitling them  
17 to toll the statute of limitations on this claim.

18 88. Plaintiff and the other members of the Plaintiff’s Classes who endured  
19 similar violations are entitled to the amounts provided in California Labor Code §  
20 226(e), plus costs and attorneys’ fees.

21 **SIXTH CAUSE OF ACTION**  
22 **(FAILURE TO PAY WAGES DUE AND PAYABLE TWICE**  
23 **MONTHLY)**

24 **[CALIFORNIA LABOR CODE § 204]**  
25 **(Against WELLS FARGO and DOES 1-100)**

26 89. Plaintiff re-alleges and incorporates by reference, as though fully set  
27 forth herein, the prior paragraphs of this Complaint.  
28

1           90. California Labor Code § 204 requires that all wages are due and payable  
2 twice in each calendar month.

3           91. The wages required by California Labor Code §§ 226.7 and 1194 and  
4 other statutes became due and payable to Plaintiff and the employee Class Members  
5 when they were not provided with a meal period or rest period or paid straight or  
6 overtime wages to which they were entitled.

7           92. Defendants violated California Labor Code § 204 by systematically  
8 refusing to pay wages due.

9           93. Defendants concealed this information from Plaintiff, despite having a  
10 statutory duty to provide this information, entitling them to toll the statute of  
11 limitations on this claim.

12           94. As a result of the unlawful acts of Defendants, Plaintiff and the other  
13 members of the Plaintiff's Classes who endured similar violations, have been  
14 deprived of wages in amounts to be determined at trial, and are entitled to recovery  
15 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,  
16 pursuant to California Labor Code §§ 204, 210, 215, 218.5 and 1194.

17                           **SEVENTH CAUSE OF ACTION**

18                   **(FAILURE TO PAY WAGES UPON TERMINATION EMPLOYMENT)**

19                           **[CALIFORNIA LABOR CODE §§ 201- 203]**

20                           **(Against WELLS FARGO and DOES 1-100)**

21           95. Plaintiff re-alleges and incorporates by reference, as though fully set  
22 forth herein, the prior paragraphs of this Complaint.

23           96. Plaintiff was discharged from her employment with Defendants within  
24 the applicable statute of limitations.

25           97. However, Defendants failed to pay Plaintiff and the members of the  
26 Plaintiff Classes without abatement all wages as defined by applicable California  
27 law. Among other things, they were not paid any of the rest and meal period  
28 compensation referred to in this complaint, neither were they paid the other unpaid

1 wages referred to in this Complaint. Defendants' failure to pay said wages within  
2 the required time was willful within the meaning of California Labor Code §§ 201-  
3 203.

4 98. Therefore, Plaintiff, and the other members of the Plaintiff Classes, are  
5 entitled to one day's wages for each day they were not timely paid all said wages  
6 due, up to a maximum of 30 days' wages. Since they were never paid the premium  
7 wages to which they were entitled, and were never paid the other unpaid wages  
8 referred to in this complaint, Plaintiff and the other members of the Plaintiff classes  
9 who are former employees of Defendants, are entitled to 30 days of wages, attorneys'  
10 fees and costs.

11 **EIGHTH CAUSE OF ACTION**  
12 **FOR UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS PRACTICES**

13 **[CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*]**

14 **(Against WELLS FARGO and DOES 1-100)**

15 99. Plaintiff and the Members of the Class (and Plaintiff Classes) re-allege and  
16 incorporate by reference, as though fully set forth herein, the paragraphs previously  
17 alleged in this Complaint.

18 100. This claim is brought by Plaintiff, on behalf of herself and on behalf of the  
19 Class and the Plaintiff Classes.

20 101. At all times relevant hereto, from time to time, the Class Members have  
21 worked more than eight (8) hours in a workday, and/or more than forty (40) hours in a  
22 workweek, as employees of Defendants. The representative Plaintiff herein and  
23 members of the Class have had their hours adjusted, changed and/or modified to not  
24 reflect their actual number of hours worked per day and per pay period. Plaintiff and  
25 the members of the Plaintiff Classes have therefore not been paid all earned and owed  
26 wages.

27 102. At all times relevant hereto, from time to time, Plaintiff and aggrieved  
28 employees have worked more than twelve (12) hours in a workday, and/or more than

1 eight (8) hours on the seventh (7<sup>th</sup>) consecutive workday in a workweek, as employees  
2 of Defendants. The representative Plaintiff herein and members of the Class have had  
3 their hours adjusted, changed and/or modified to not reflect their actual number of hours  
4 worked per day and per pay period, and endured these and the other violations detailed  
5 in the above causes of action.

6 103. At all times relevant hereto, from time to time, Plaintiff and the Class have  
7 been denied meal breaks by Defendants.

8 104. At all times relevant hereto, from time to time, Plaintiff and the Class have  
9 been denied rest breaks by Defendants.

10 105. Defendants, and each of them, are “persons” as defined under of Business  
11 & Professions Code § 17021.

12 106. During the period of at least four years prior to the Complaint filing to the  
13 present time and at all times relevant hereto, by and through the conduct described  
14 herein, the Defendants have engaged in unfair, unlawful and fraudulent business  
15 practices, in violation of California Business & Professions Code §§ 17200, *et seq.*, and  
16 have thereby deprived Plaintiff, and all persons in interest, of fundamental rights and  
17 privileges guaranteed to all employees under California law.

18 107. Defendants own, operate and manage business entities in California which  
19 provide services in California to the public as defined in of Business & Professions Code  
20 §§ 17022 and 17024.

21 108. Defendants, as set forth in this Complaint, *supra*, engaged in false, unfair  
22 and misleading business practices, consisting of acts and omissions that include, but are  
23 not limited to:

24 (a) The fact that Defendants adjusted, rounded, altered and/or changed  
25 time and/or pay schedules to reflect that they had not worked all  
26 straight time or overtime hours;

27 (b) The fact that Defendants required non-exempt, hourly tellers to work  
28 more than three and a half (3.5) hour shifts without a ten (10) minute

rest period;

- (c) The fact that Defendants required non-exempt, hourly tellers to work more than five (5) hour shifts without a thirty (30) minute meal period;
- (d) The fact that Defendants required non-exempt, hourly tellers to work more than five (5) hours per week without a thirty (30) minutes meal period, and then adjusted, altered and/or changed schedules and/or time clocks to reflect that they had received a thirty (30) minute meal period;
- (e) The fact that Defendants kept no detailed records of non-exempt, hourly tellers' actual daily work activities, in part, to prevent Plaintiff and Plaintiff Classes from recovering overtime wages from Defendants after the discovery of Defendants' deceptive, fraudulent, false, unfair and unlawful conduct;
- (f) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Classes for all hours worked;
- (g) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Classes twice monthly for all hours worked;
- (h) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Classes upon termination of employment; and
- (i) The fact that Defendants' activities related to their failure to disclose material and relevant information constitutes violations of Business & Professions Code § 17200.

109. Defendants, and each of them, have under reported to state authorities wages earned by non-exempt, hourly employees and, therefore, have underpaid state taxes, employer matching funds, unemployment premiums and Worker's Compensation premiums. The aforesaid conduct is criminal in nature and subjects the Defendants, and each of them, to sanctions, fines and imprisonment, and is actionable under Business &

1 Professions Code §§ 17000, *et seq.* and 17200, *et seq.*

2 110. Pursuant to California Business & Professions Code §§ 17071 and 17075,  
3 the failure of Defendants, and each of them, to pay overtime wages, related benefits, and  
4 employment taxes, is admissible as evidence of Defendants' intent to violate Chapter 4  
5 of the Unfair Business Trade Act.

6 111. Defendants' practices are unlawful, unfair, deceptive, untrue, and  
7 misleading. Non-exempt, hourly employees, including Plaintiff and Plaintiff Classes are  
8 likely to be deceived by these practices.

9 112. As a direct and proximate result of these acts and omissions, Plaintiff, is  
10 informed and believes, and based upon that information and belief alleges, that the  
11 Defendants, and each of them, were able to unfairly compete with other similar  
12 businesses in the state of California by not paying overtime and wages in violation of  
13 Business & Professions Code Chapters 4 and 5, *et al.* Due to this unfair business  
14 practice, Defendants have been able to charge lower prices for its goods and services  
15 than the prices charged by other comparable employers doing business in the State of  
16 California.

17 113. The victims of this unfair business practice include, but are not limited to,  
18 all non-exempt, hourly tellers employed by Defendants, competitors of Defendants in  
19 the state of California, and the general public.

20 114. Plaintiff is informed and believes, and based upon that information and  
21 belief alleges, that Defendants, and each of them, performed the above-mentioned acts  
22 with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiff,  
23 other employees, other competitors, and the general public.

24 115. By and through the conduct described above, Plaintiff, and all non-exempt,  
25 hourly tellers, have been deprived of the right to be paid all wages earned, including  
26 meal and rest premiums and overtime compensation earned by virtue of employment  
27 with the Defendants at regular intervals, in accordance with the requirements of Labor  
28 Code §§ 200-203, 204, 225, 226.7, 510, 512, 1194, 1197, 1198, *et seq.*

1           116. By and through their unfair, unlawful and/or fraudulent business practices  
2 described herein, Defendants have obtained valuable property, money and services from  
3 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all non-  
4 exempt, hourly tellers of valuable rights and benefits guaranteed by law, all to their  
5 detriment.

6           117. Plaintiff and the Class have injury-in-fact as a result of Defendants'  
7 conduct. Moreover, Plaintiff and the Class have lost money as a direct result of  
8 Defendants' unfair, unlawful, deceptive and fraudulent conduct.

9           118. All of the acts described herein as violations of, among other things, the  
10 California Labor Code and Industrial Welfare Commission Wage Orders, are unlawful  
11 and in violation of public policy; and in addition are immoral, unethical, oppressive,  
12 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent  
13 business practices in violation of California Business & Professions Code §§ 17200, *et*  
14 *seq.*

15           119. Plaintiff, individually, and on behalf of members of the Plaintiff Classes,  
16 are entitled to, and does seek such relief as may be necessary to disgorge the profits  
17 which the Defendants have acquired, or of which Plaintiff have been deprived, by means  
18 of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff,  
19 and the members of the Plaintiff Classes, are not obligated to establish individual  
20 knowledge of the unfair practices of Defendants in order to recover restitution.

21           120. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is  
22 further entitled to and does seek a declaration that the above described business practices  
23 are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants,  
24 and each of them, from engaging in any of the above-described unfair, unlawful and/or  
25 fraudulent business practices in the future.

26           121. Plaintiff, individually, and on behalf of members of the Plaintiff Classes,  
27 has no plain, speedy, and/or adequate remedy at law to redress the injuries which she has  
28 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business

practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff and the Plaintiff Classes have suffered and will continue to suffer irreparable harm unless the Defendants' and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

122. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to fail to pay overtime wages to non-exempt, hourly employees. In addition, Defendants, and each of them, will continue to avoid paying the appropriate taxes, insurance and unemployment holdings.

123. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, requests that the Court issue a preliminary and permanent injunction prohibiting the Defendants, and each of them, from requiring non-exempt, hourly employees from working more than eight (8) hours a work day and/or forty (40) hours a week in any work week without payment of overtime wages.

124. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, also requests that the Court order Defendants to disgorge all illegally obtained monies from failing to pay taxes, state disability insurance premiums, and unemployment taxes, obtained by way of their violation of Business & Professions Code §§ 17200, *et seq.*

125. As Plaintiff seek to enforce an important right affecting the public interest, to wit, the lawful payment of overtime wages as required by law the disgorgement of ill-gotten gains and the restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of attorneys' fees, pursuant to Civil Code § 1021.5.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff **DEMANDS A JURY TRIAL** and prays for judgment as follows:

#### **ON THE FIRST CAUSE OF ACTION**

1. For facilitated Notice under 29 USC § 216(b);
2. For compensation pursuant to FLSA 29 U.S.C. § 201 et seq.;
3. For conditional and Final Certification of a Collective Action;



4. For interest on any compensatory damages; and
5. For attorneys' fees, interest, and costs of suit pursuant to 29 U.S.C. § 216(b).

**ON THE SECOND CAUSE OF ACTION**

1. For pay at the correct wage rate, for each hour Plaintiff and the Plaintiff Classes were not properly paid;
2. For other compensatory damages and/or statutory damages and statutory penalties resulting from improper compensation according to proof;
3. For statutory attorney fees according to proof;
4. For statutory interest according to proof; and
5. For reasonable attorney's fees and costs pursuant to the California Labor Code.

**ON THE THIRD CAUSE OF ACTION**

1. For statutory compensation, including one hour of pay at the correct wage rate, for each day Plaintiff and the Plaintiff Classes were not provided an appropriate meal period;
2. For waiting time penalties according to proof;
3. For statutory costs according to proof; and
4. For statutory interest according to proof.

**ON THE FOURTH CAUSE OF ACTION**

1. For statutory compensation, including one hour of pay at the correct wage rate, for each day Plaintiff and the Plaintiff Classes were not provided an appropriate rest period;
2. For waiting penalties according to proof;
3. For statutory costs according to proof; and
4. For statutory interest according to proof.

**ON THE FIFTH CAUSE OF ACTION**

1. For statutory compensation for any harm caused;
2. For compensatory damages and interest thereon for actual harm caused; and
3. For statutory penalties, interest and attorneys' fees and costs.

**ON THE SIXTH CAUSE OF ACTION**

1. For statutory compensation and compensatory damages for any harm caused;  
and
2. For statutory penalties and attorneys' fees and costs.

**ON THE SEVENTH CAUSE OF ACTION**

1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for all wages not timely paid upon termination;
2. For penalty enhancement for willful conduct;
3. For statutory interest according to proof; and
4. For reasonable attorney's fees and costs pursuant to the Labor Code.

**ON THE EIGHTH CAUSE OF ACTION**


1. For the equitable, injunctive and declaratory relief;
2. For Treble damages; and
3. For disgorgement of profits.

**ON ALL CAUSES OF ACTION**

1. For reasonable attorney fees;
2. For costs of suit;
3. For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
4. For such other and further relief as this Court may deem just and proper.

1 Dated: April 15, 2016

QUINTILONE & ASSOCIATES

2  
3 By: 


4 RICHARD E. QUINTILONE II  
5 ALVIN B. LINDSAY,  
6 Attorneys for Plaintiff CHRYSTIANE  
7 LAYOG, on behalf of herself and all  
8 others similarly situated

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of the claims by jury to the extent authorized by  
11 law.

12 Dated: April 15, 2016

QUINTILONE & ASSOCIATES

13  
14 By: 

15 RICHARD E. QUINTILONE II  
16 ALVIN B. LINDSAY,  
17 Attorneys for Plaintiff CHRYSTIANE  
18 LAYOG, on behalf of herself and all  
19 others similarly situated  
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